IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4904 OF 2003

IN

FIRST APPEAL NO.99 OF 2002

Gajanan Dattatray Poojari ..Applicant

Versus

The Maharashtra State Road

Transport Corpn. ..Respondent

Mr.N.J.Patil for applicant

Mr.C.M.Lokesh i/b G.S.Hegde for respondent

CORAM : P.V.KAKADE,J.

DATE : 29TH OCTOBER, 2004

P.C.:

1. Heard both sides.

2. This is an application seeking

modification/recalling of the order dated 9.7.2003 passed by this Court in C.A.No.1771 of 2003. Perused the said order, which stipulates that the Lower Court shall invest the amount in a Postal Deposit which appears to be in larger interest of the Applicant. By earlier Order dated 11.2.2002 this Court passed order of Stay subject to appellant depositing the amount of Rs.5,00,000/= to the Lower Court with liberty to the Respondent-claimant to withdraw the amount of Rs.2,50,000/= against the Bank guarantee and remaining amount of Rs.2,50,000/= against the Security to the satisfaction of the Lower Court. It is submitted that security was furnished by the claimant and amount of Rs.2,50,000/= was withdrawn, and thereafter the same amount was utilised to furnish bank guarantee to withdraw the remaining amount, as a result of which the position was appears to be that the applicant does not have money in his hands but discharged his liability.

3. After hearing the learned counsel for the applicant it appears that the order dated 9.7.2003 for investment in the postal deposit should not be disturbed as it would serve the interest of the claimant instead of I am inclined to modify the order dated 11.2.2002 waiving

condition of furnishing bank guarantee which would serve the purpose of the applicant at the same time security would be required to be furnished so as to avoid any prejudice to the cause of the appellant. Hence the order dated 11.2.2002 stands modified and it is directed that instead of furnishing bank guarantee for the amount of Rs.2,50,000/= the said amount to be withdrawn on furnishing security to the satisfaction of the lower court by the applicant. With this direction the application stands disposed of.

4. It is clarified that the amount of Rs.2,50,000/= deposited by the applicant to furnish bank guarantee is allowed to withdrawn on furnishing security to the satisfaction of the lower court.

Certified copy expedited.